Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Lifeline and Link-up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
	)	

Further Notice of Proposed Rulemaking
Reply Comments of the Montana Telecommunications Association

The Montana Telecommunications Association ("MTA") represents rural eligible telecommunications carriers ("ETCs") serving nearly 90 percent of Montana's wireline consumers. MTA's members include small and large telecom providers, both member-owned telephone cooperatives and shareholder-owned commercial companies. MTA's member companies have deployed broadband service throughout the vast majority of their serving areas, often offering access to broadband capabilities[1] to nearly 100 percent of their customer service areas.

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[1] Such broadband access usually refers to DSL service, not all of which would satisfy the Commission's 4 Mbps down/1 Mbps up criteria as set forth in the *Transformation Order*.

MTA concurs generally in the Initial Comments filed in this proceeding on January 18, 2012 by the National Exchange Carrier Association, Inc. ("NECA"), the National Telecommunications Cooperative Association ("NTCA"), the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") and the Western Telecommunications Alliance ("WTA"), collectively representing rate-of-return regulated incumbent local exchange carriers. In particular, MTA shares the concern of the above-named RLEC associations that the intent of the *Transformation Order* ("Order")—to facilitate further investment in and deployment of broadband technologies—may be thwarted, not promoted, by the Order. Further, MTA concurs with the RLEC associations' concern that the Further Notice exacerbates the uncertainty and unpredictability caused by the Order and supports the recommendation that the Further Notice should be put on hold until the effects of the Order are better understood.

While the Order affects different members differently, in general MTA's members have shrunk their investment horizons as a result of the Order. That is, instead of adhering to long term investment plans, members generally have reduced their investment plans to a one-year time frame, with a "wait and see" approach to "out-years." In some cases, companies have reduced or even halted their short-term investment goals as a result of anticipated reductions in support, or uncertainty caused by the preliminary calculations of the effects of regression analysis, among other reductions, or potential reductions, contained in the Order.

The proposed rules in the Further Notice only add to the uncertainty, unpredictability and insufficiency of universal service support that these companies previously had calculated into their investment plans. For example, the regression analysis not only reduces anticipated support for capital and operating expenditures, but it applies retroactively, thus causing immediate recalculation of current investment plans and potential loss of recovery of expenditures already committed.[2] The proposed reduction in the rate of return—not to mention a proposed deviation from rate of return represcription rules[3]—as well as an uncertain investment recovery environment in "partially competitive" areas causes companies to put the brakes on both current and future investment.[4]

This is hardly any way to encourage further deployment of advanced telecommunications services in rural America.

In a letter[5] to Agriculture Secretary Tom Vilsack, NTCA, OPASTCO and WTA enumerated the numerous concerns the rural associations and their members share with regard to the effects of the Order on investment in broadband capacity in rural America. As explained by the rural associations in the letter to Secretary Vilsack,

> Among other things, the FCC should expressly decline at this time to: (a) reduce the rate of return available for investments made in rural areas; (b) apply and extend a series of new caps (beyond those already expressly adopted in the Order) to further reduce USF support payments for RLECs; (c) eliminate the last vestiges of ICC payments without a clear path for replacement or restructuring; and/or (d) carve up RLEC serving areas in a way that will make it even more difficult to justify new investments or recover existing investments. Moreover, since carriers cannot 'undo' loan

[2] "The Commission's use of quantile regression analyses is flawed and will lead to serious distortions in [High Cost Fund] support if applied to HCLS or other USF calculations," citing Dr. Roger Koenker, "whom the Commission itself has hailed as the father of quantile regression analysis." Initial Comments of the rural associations, January 18, 2012. p. 64. See also, comments of NASUCA, Maine Office of Public Advocate, New Jersey Division of Rate Counsel and TURN.

[3] "The Commission should not try to have its cake and eat it too—a lower rate of return and a less than thorough represcription proceeding." Comments of USTelecom, January 18, 2012. p. 17.

[4] See, among others, comments of the Regulatory Commission of Alaska, regarding anticipated cuts in investment recovery; California Public Utilities Commission and the Indiana Utility Regulatory Commission, regarding evaluation of whether there is study area overlap by unsubsidized competitor; the Nebraska Public Service Commission and USTelecom, regarding need for predictable and sufficient funding mechanism which encourages long-term investment.

[5] See letter from the National Telecommunications Cooperative Association ("NTCA"), the Organization for the Preservation and Advancement of Small Telephone Companies ("OPASTCO") and the Western Telecommunications Alliance ("WTA") to the Honorable Thomas J. Vilsack. January 12, 2012. This letter, referenced by the rural associations in their Initial Comments, is attached hereto.

> commitments or ‘tear out’ existing networks, the FCC should make clear that any caps or other limitations on cost recovery already adopted in its Order will be applied prospectively. The retroactive application of caps violates fundamental fairness and disrupts any notions of uncertainty that are the hallmark of rational rulemaking.[6]

MTA recommends that the Commission delay implementation of the Further Notice until such time that the effects of the *Transformation Order* are settled.[7] It is ironic that only weeks following the release of the Order, the Commission released an Order reforming the Lifeline Program.[8] In this regard, Commissioners note that the effect of reforms proposed in the *Lifeline Reform Order* should be settled before imposing additional burdens on consumers or providers.[9] In particular, Commissioners were reluctant to impose a budget on the Lifeline Program until the dust settles from the Order and stakeholders can take measure of the *Lifeline Order's* effects on the goals of the Program.

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[6] *Id*. p.4.

[7] See rural associations' letter to Secretary Vilsack, *op cit*., p. 4. “The FCC should expressly decline to act on several further aspects of its Further Notice at this point, and should instead signal service providers, lenders, investors, and consumers that it will allow adequate time for adjustment to the changes already made in its Order. The FCC could then indicate its intent to revisit these issues after a reasonable period of time – such as five years – has passed.”

[8] *Lifeline and Link Up Reform and Modernization,* WC Dkt. No. 11-42; *Lifeline and Link Up*, WC Dkt. No. 03-109; *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training*, WC Dkt. No. 12-23. Adopted: January 31, 2012. Released: February 6, 2012.

[9] *Id*. See for example, statement of Chairman Julius Genachowski: “After evaluating the impact of today's fundamental overhaul of the program and addressing key issues teed up in the Further Notice of Proposed Rulemaking, including the appropriate monthly support amount, the Commission will be in a position to adopt a budget for the program in early 2013.” p. 288. “In other words, our improvements to the Lifeline program will remain in ‘beta’ mode while we continue to work to maximize its efficiencies.” Statement of Commissioner Robert M. McDowell Approving in Part, Concurring in Part, Dissenting in Part. p. 293. “But at this junction it is best for us to provide a baseline for how the reforms we adopt today unfold over the next year…I believe it is appropriate for us to first review how the reforms impact the size of the Fund, and whether our assumptions and projections are accurate…” Statement of Commissioner Mignon Clyburn Approving in Part, Concurring in Part. p. 296.

MTA urges the Commission to apply the same standards to its consideration of the actual effects of the *Transformation Order* on investment in advanced telecommunications capabilities in rural America.

Conclusion

MTA finds that in many cases the Order leads to universal service support that is neither sufficient nor predictable, contrary to statute. The consequences of the Order affect not only end-users and the telecommunications providers, but also affect overall economic and employment opportunity. The effects of the Order must be settled before additional Further Notice rules are introduced into an already-unstable market. The Commission needs to ensure predictable and sufficient funding to deliver advanced broadband services to rural consumers.

Respectfully submitted,

/s/

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February 17, 2012

Attachment A:

Letter from NTCA, OPASTCO and WTA
to the Honorable Thomas J. Vilsack, Secretary, U.S. Department of Agriculture
and Chairman, White House Rural Council

January 12, 2012